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UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CIVIL NO. 08-00168 JMS KSC
	)	
Plaintiff,	)	FINDINGS AND RECOMMENDATION TO
	)	GRANT PLAINTIFF'S MOTION FOR
vs.	)	AN ORDER TO APPROVE
	)	COMMISSIONER'S REPORT FILED
GRACE LEINAALA OCLINARIA	)	MARCH 7, 2011 AND FOR
a.k.a. GRACE L. OCLINARIA, ET	)	CONFIRMATION OF FORECLOSURE
AL.,	)	SALE
	)	
Defendants.	)	
	)	
	)	

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FINDINGS AND RECOMMENDATION TO GRANT PLAINTIFF'S  
MOTION FOR AN ORDER TO APPROVE COMMISSIONER'S REPORT FILED  
MARCH 7, 2011 AND FOR CONFIRMATION OF FORECLOSURE SALE

Before the Court is Plaintiff United States of  
America's Motion for an Order to Approve Commissioner's Report  
filed March 7, 2011, and for Confirmation of Foreclosure Sale,  
filed on March 18, 2011 (the "Motion to Confirm"). Lyle S.  
Hosoda, the Court-appointed Special Counsel for Defendant Grace  
Leinaala Oclinaria, also known as Grace L. Oclinaria ("Defendant

Oclinaria") filed a Position Statement Re: Plaintiff United States of America's Motion for an order to Approve Commissioner's Report filed March 7, 2011, and for Confirmation of Foreclosure Sale and Statement of Final Compensation on March 23, 2011. The Court held a hearing on the Motion to Confirm on May 5, 2011 and, having considered the record and arguments by counsel, the Court hereby makes the following findings and recommendations:

FINDINGS OF FACT

1. This is a civil action brought by Plaintiff United States of America (the "Government" or the "United States"), seeking monetary judgment against Defendant Oclinaria, on a Mortgage, Note and Mortgage encumbering the property located at 86-913 Hale Ekahi Drive, Waianae, Hawaii, and designated as Tax Map Key No. (1) 8-6-021-022-0000 (the "Mortgaged Property").

2. Jurisdiction over this action is based on Title 28, United States Code § 1345.

3. On January 7, 2009, the Court granted the Plaintiff United States of America's Motion for Summary Judgment, Interlocutory Decree of Foreclosure and Deficiency Judgment and appointed Randall M.L. Yee, Esq. to serve as the Commissioner to sell the Mortgaged Property.

4. On February 11, 2009, the Court appointed Lyle S. Hosoda, Esq. as Defendant Oclinaria's Special Counsel for the foreclosure proceedings.

5. On August 7, 2009, the Court approved the Stipulation to Stay Proceedings and the foreclosure proceedings was stayed for one year, pursuant to the Service Members Civil Relief Act, 50 U.S.C. App. § 501, et seq.

6. On March 3, 2010, the Court approved a Stipulation to Lift Stay for the Limited Purpose of Determining the Fees and/or Costs of the Commissioner and Defendant Oclinaria's Court-Appointed Counsel to lift the stay for the limited purpose of determining the fees and/or costs of the Commissioner and of the Court-appointed counsel for Defendant Oclinaria.

7. On March 5, 2010, the Magistrate Judge issued the Findings and Recommendation to Award Fees Requested in the Statement of Interim Compensation [Doc. No. 41] to award \$5,961.04 in fees to Defendant Oclinaria's Court-appointed counsel, which the Court adopted on March 24, 2010. The interim fees and costs were incurred during the period from February 11, 2009 to June 5, 2009. The District Court adopted the Magistrate Court's findings on March 24, 2010.

8. The Government agreed to pay the amounts due and owing to Defendant Oclinaria's Court-appointed counsel, provided that it would be reimbursed for compensating Defendant Oclinaria's counsel from the foreclosure proceeds.

9. The stay expired on February 2, 2011 and a foreclosure auction was scheduled for February 28, 2011.

10. On March 7, 2011, the Commissioner filed his report detailing the foreclosure of the mortgaged Property

a. Open houses were held on February 6, 2011 and February 13, 2011 to allow the general public to view the property;

b. On February 28, 2011, at 12:00 p.m., in front of the First Circuit Court Building, Kaahumanu Hale, in Honolulu Hawaii, the Commissioner conducted a public auction for the sale of the Mortgaged Property; and

c. At the public auction, the Commissioner received one bid from Plaintiff for \$178,991.58 and, after repeatedly soliciting higher bids and receiving none, the Commissioner declared the property sold Plaintiff for \$178,991.58, subject to the Court's confirmation.

11. At the hearing on the Government's Motion to Confirm, the Court re-opened bidding to ascertain whether there would be a higher bidder on the Mortgaged Property.

12. Tyler Greene, Vice President of Acquisitions for Mokuaina Properties, LLC submitted a bid of \$188,000.00 at the hearing on the United States' Motion to Confirm.

13. Based upon the Commissioner's recommendation, and arguments submitted at the hearing on the United States' Motion to Confirm, the Court finds that the winning bid of \$188,000.00

by Tyler Greene or his nominee(s) ("Purchaser") is a fair and reasonable bid for the Mortgaged Property and confirms the sale.

14. The Commissioner incurred expenses fees and costs totaling \$5,796.29, of which \$4,637.50 was for the commissioner's fee, \$218.52 was for taxes on the commissioner's fee, and \$940.27 was for expenses. The fees and costs are fair and reasonable.

15. In the Position Statement Re: Plaintiff United States of America's Motion for an Order to Approve Commissioner's Report filed March 7, 2011, and for Confirmation of Foreclosure Sale and Statement of Final Compensation filed on March 23, 2011, Defendant Oclinaria's Court-appointed counsel informed the Court that the United States waived its rights to seek a deficiency judgment against Defendant Oclinaria.

16. Defendant Oclinaria's court-appointed counsel also provided a Statement of Final Compensation in the amount of \$8,182.65, of which \$8,165.00 was for attorneys' fees and \$17.65 was for costs, as part of the Position Statement Re: Plaintiff United States of America's Motion for an order to Approve Commissioner's Report filed March 7, 2011, and for Confirmation of Foreclosure Sale and Statement of Final Compensation filed on March 23, 2011. The fees and costs provided in the Statement of Final Compensation were incurred during the period from June 6, 2009 to March 23, 2011.

17. The Court finds that the hourly rates charged by Mr. Hosoda (noted as "LHO" in the invoice), Mr. Morikone (noted as "KM" in the invoice), and Ms. Raina Gushiken (noted as "RG" in the invoice) are reasonable and consistent with the community's prevailing rates, as well as the hourly rates generally deemed reasonable by the Court.

#### RECOMMENDATIONS

Based on the foregoing findings of fact, the Court makes the following recommendations:

1. The Commissioner's Report filed on March 7, 2011 is ratified, approved, and confirmed.

2. In accordance with the Findings of Fact, Conclusions of Law and Order Granting Plaintiff United States of America's Motion for Summary Judgment, Interlocutory Decree of Foreclosure, and Deficiency Judgment filed on January 7, 2009, the sale of the Mortgaged Property to the Purchaser for \$188,000.00 is ratified, approved, and confirmed.

3. The Commissioner, upon receipt of the full purchase price, shall make good and sufficient conveyance of the mortgaged property to the Purchaser or Purchaser's nominee.

4. The Commissioner is allowed the sum of \$4,637.50 for his commissioner's fee, \$218.52 for taxes on the commissioner's fee, and \$940.27 was for expenses, for a total of \$5,796.29.

5. Defendant Oclitaria's Court-appointed counsel is allowed the sum of \$ 7,606.00, of which \$ 7,592.50 was for attorneys' fees and \$13.50 was for costs.

6. Out of the \$188,000.00 received from the foreclosure sale of the Mortgaged Property, plus any rentals received, Commissioner shall pay:

a. The sum necessary, if any, to the appropriate authorities to pay delinquent real property taxes on the Mortgaged Property, pro-rated to the date of closing;

b. The sum necessary, if any, to the appropriate entity to pay delinquent lease rents on the Mortgaged Property, prorated to the date of closing;

c. The sum of \$940.27 to the Commissioner for the expenses incurred in conducting the foreclosure sale;

d. The sum of \$4,637.50 to the Commissioner for his commissioner's fee, and \$218.52 to the Commissioner for taxes on the commissioner's fee for the Commissioner's services;

e. The sum of \$ 7,606.00 to Defendant Oclitaria's Court-appointed counsel, of which \$ 7,592.50 was for attorneys' fees and \$13.50 was for costs, for services provided to represent Defendant Oclitaria pursuant to pursuant to the Service Members Civil Relief Act, 50 U.S.C. App. § 501, et seq.;

f. The sum of \$5,961.04 to the United States, in accordance with the Findings and Recommendation to Award Fees

Requested in the Statement of Interim Compensation filed March 5, 2010, for payment of services provided by Defendant Oclinaria's Court-appointed counsel for the period from February 11, 2009 to June 5, 2009; and

g. The balance of the proceeds to the United States in partial satisfaction of its debt, plus any further advances made by the United States for property expenses (e.g., real property taxes, fire and/or mortgage insurance premium, etc.). The costs of closing will be paid out of the balance of the proceeds paid to the United States.

7. Upon making the conveyance of the property to the Purchaser and filing the distribution statement and account, the Commissioner shall be discharged from further duties and responsibilities as Commissioner.

8. Defendants GRACE LEINAALA OCLINARIA a.k.a. GRACE L. OCLINARIA, DEPT. OF BUDGET AND FISCAL SERVICES, REAL PROPERTY TAX DIVISION, CITY AND COUNTY OF HONOLULU (collectively, "Defendants") and all parties and persons claiming by, through or under the Defendants shall be forever barred from any and all right, title, interest, and claims at law or in equity to the Mortgaged Property, except for liens for real property taxes and assessments lawfully imposed by governmental authorities against the Mortgaged Property.



9. Upon delivery of the conveyance to the Purchaser or the Purchaser's nominee, the Purchaser or the Purchaser's nominee shall be entitled to immediate, exclusive possession of the mortgaged Property. The Court reserves jurisdiction to enter such orders as may be necessary or appropriate to assist Purchaser or Purchaser's nominee to gain such possession.

10. A judgment for possession and a writ of possession in favor of Purchaser or Purchaser's nominee shall be issued, commanding the sheriff to remove from the Mortgaged Property any tenants or occupants and any persons holding by, through, or under any tenant or occupant.

11. The Commissioner, Purchaser, or Purchaser's nominee is authorized to dispose of any personal property, if any, remaining on the Mortgaged Property.

12. Pursuant to sections 501-151 and 634-51, Hawaii Revised Statutes, as amended, any and all other and further encumbrances or purchase with respect to the mortgaged property, or any part, whose interest arises on or after April 18, 2008, the date the Notice of Pendency of Action was filed in the State of Hawaii Bureau of Conveyances, are forever barred from any and all right, title, and interest in and to the Mortgaged Property.

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13. The order taking action on this Findings and Recommendation be entered as a final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure as there is no just reason for delay.

DATED: June 17, 2011, Honolulu, Hawaii.



  
Kevin S.C. Chang  
United States Magistrate Judge

APPROVED AS TO FORM:

/s/ Ryan H. Ota  
CARRIE K.S. OKINAGA, ESQ.  
RYAN H. OTA, ESQ.  
Office of Corporation Counsel  
Attorney for Defendant  
DEPARTMENT OF BUDGET AND FISCAL  
SERVICES, REAL PROPERTY TAX DIVISION  
CITY AND COUNTY OF HONOLULU

/s/ Kevin T. Morikone  
LYLE S. HOSODA, ESQ.  
RAINA P.B. GUSHIKEN, ESQ.  
CHRISTOPHER T. CHUN, ESQ.  
KEVIN T. MORIKONE, ESQ.  
Attorneys for Defendant  
GRACE LEINAALA OCLINARIA a.k.a.  
GRACE L. OCLINARIA

/s/ Randall M.L. Yee  
RANDALL M.L. YEE  
Commissioner

United States of America v. Oclitaria, Civil No. 08-00168 JMS KSC  
FINDINGS AND RECOMMENDATION TO GRANT PLAINTIFF'S MOTION FOR AN ORDER TO APPROVE  
COMMISSIONER'S REPORT FILED MARCH 7, 2011 AND FOR CONFIRMATION OF FORECLOSURE SALE